

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

February 25, 2011

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 10HD-200

Hawaii

Rescind Prior Board Action of November 9, 1990, Item F-2; Conveyance of Remnants to County of Hawaii; Issuance of Immediate Management Right-of-Entry to the County of Hawaii, Holualoa 1st and 2nd Partition, North Kona, Hawaii, Tax Map Key: (3) 7-6-16:13 and Road Remnant A.

APPLICANT:

County of Hawaii

LEGAL REFERENCE:

Section 171-52 and -95, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Holualoa 1st and 2nd Partition situated at Holualoa, North Kona, Hawaii, identified by Tax Map Key: (3) 7-6-16:13 and Road Remnant A, as shown on the attached map labeled Exhibit A.

AREA:

Tax Map Key: (3) 7-6-16:13:	9,362 square feet, more or less
Road Remnant A:	2,914 square feet, more or less

ZONING:

State Land Use District:	Urban
County of Hawaii CZO:	Resort, V-1.25

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Vacant (with exception of unpermitted encroachment on Tax Map Key: (3) 7-6-16:13), and unencumbered.

CONSIDERATION:

Gratis.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Not applicable. Subject lands are to be conveyed to an abutting landowner, the County of Hawaii, and will become County land at that point.

DCCA VERIFICATION:

Not applicable. The County of Hawaii is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Provide a title report for the subject lands at Applicant's own cost; and
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

REMARKS:

Pursuant to Section 171-52, HRS, a remnant is defined as "a parcel of land economically or physically unsuitable or undesirable for development or utilization as a separate unit by reason of location, size, shape, or other characteristics." The subject parcels have been determined to be remnants by this definition because the parcels are abandoned road rights-of-way that are economically or physically unsuitable for development or utilization due to their elongated shape and small land area.

The issue of what to do with the subject remnants has previously been before the Board of Land and Natural Resources. The remnants are designated as Tax Map Key: (3) 7-6-16:13 (Parcel 13) and the adjacent Road Remnant A. See map attached as Exhibit A. On

the makai side of Parcel 13, sandwiched between the remnant and the sea, is a private parcel designated as Tax Map Key: (3) 7-6-16:32 (Parcel 32). The tax map shows the parcel with a bowtie shape. However, the shoreline has advanced inland over time dividing the parcel in two at its narrowest point. See satellite map with TMK overlays attached as Exhibit B.

Land Division files show that in approximately 1966, the former owner of Parcel 32 obtained a permit to build a beach cottage on the private land. As built, however, the structure encroached substantially onto Parcel 13. Some time before 1989, the Parcel 32 owner submitted a request to purchase portions of the remnants (totaling approximately 2,370 square feet) and consolidate them with Parcel 32. At its meeting of January 27, 1989, Item F-2, the Board approved the sale of the remnant portions to the Parcel 32 owner and imposed a \$1,000 fine against the owner for the encroachment.¹

Shortly thereafter, however, the County and the public asked the Board to reconsider the sale. The County advised that a flood control project was planned for the area and Parcel 13 may be needed for that project. The public urged the Board to retain Parcel 13 and even to acquire the private parcel for creation of a park. At its meeting of November 9, 1990, Item F-2, the Board approved a Land Division recommendation to rescind the January 27, 1989 approval of the sale and instead acquire Parcel 32 from its owner by negotiation or eminent domain for shoreline access and for use as a mini-park. See Exhibit C attached. However, funds were never secured for the acquisition of the land, and no action was taken in the ensuing years.

Applicant County of Hawaii is the owner of Alii Drive which abuts portions of the subject remnants. Both Parcel 13 and Road Remnant A are located on the makai side of Alii Drive. Other abutting properties to Parcel 13 include Parcel 32 as noted above, Tax Map Key: (3) 7-6-16:33 (Parcel 33), and Tax Map Key: (3) 7-6-15-23 (Parcel 23). Parcel 33 is owned by the State of Hawaii and is leased to the Hawaii Conference Foundation pursuant to General Lease No. S-5985 for youth athletic, education and religious purposes. It is the site of the old church known as Hale Halawai O Holualoa, which is designated on the State and National Registers of Historic Places. County Real Property Tax records show that the record owner of Parcel 32 is George A. Sandusky, and that Parcel 23 is the site of the Kona Bali Kai condominium with multiple owners.

¹ Subsequent surveys revealed that the State had no ownership interest in the relevant portion of Road Remnant A. The only remnant that could have been sold to the Parcel 32 owner was a 1,968 square foot portion of Parcel 13. Based on the information available to staff at the present time, the State owns Parcel 13, but may not have an ownership interest in Road Remnant A. Staff is including an Applicant Requirement above that Applicant provide title reports for both remnants to Land Division so the State can determine the extent of its ownership interest in both parcels. If it turns out that the State has no ownership interest in Road Remnant A, there will be nothing for the State to convey to the County with respect to that remnant.

According to Section 171-52, HRS, if there is more than one abutting owner who is interested in purchasing the remnant, it shall be sold to the one submitting the highest sealed bid or if the remnant abuts more than one parcel, the Board may subdivide the remnant so that a portion may be sold to each abutting owner. In this case, the record owner of Parcel 32, Mr. Sandusky, submitted an application to Land Division on May 10, 2010 requesting to purchase the portion of Parcel 13 that abuts Parcel 32. Staff began to process this request. However, by letter dated October 8, 2010, Applicant County of Hawaii stated its desire to acquire all of the remnants as public open space. Pursuant to HRS Section 171-95, the Board of Land and Natural Resources can convey land directly to the County. Accordingly, staff is recommending that the remnants be conveyed to the County without offering to sell portions to the abutting private landowners.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Comments were solicited from the agencies identified below with the results indicated.

Agency	Response
State:	
Historic Preservation	No response.
DOFAW-Na Ala Hele	No response.
State Parks	No comments.
Office of Conservation and Coastal Lands	No response.
Office of Hawaiian Affairs	No comments.
County of Hawaii:	
Planning Department	Reiterates the County's interest in obtaining the road remnants for County use.
Property Management	No comments.
Public Works	No response.
Parks and Recreation	No objection.
Police Department	No comments or objections.
Federal:	
Ala Kahakai National Historic Trail	No response.

The encroachment of the Parcel 32 beach cottage onto Parcel 13 remains. The County is agreeable to acquiring the lands subject to all existing encroachments, easements and other encumbrances that a title report or survey may show.

Finally, staff is recommending the issuance of an immediate management right-of-entry to the County to allow it to conduct surveys, studies and manage the remnants pending the finalization of the conveyance documents.

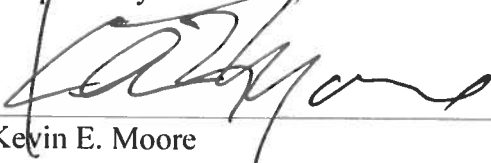
RECOMMENDATION:

That the Board:

1. Find that the subject lands are economically or physically unsuitable or undesirable for development or utilization as a separate unit by reason of location, size, shape, or other characteristics and, therefore, by definition are remnants pursuant to Chapter 171, HRS.
2. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
3. Subject to the Applicant fulfilling all of the Applicant Requirements listed above, authorize the conveyance of the subject remnants to the County of Hawaii covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - a. The standard terms and conditions of the most current deed or grant (remnant) form, as may be amended from time to time;
 - b. The conveyance shall be subject to all encroachments, easements and other encumbrances that a current title report or survey may show;
 - c. Review and approval by the Department of the Attorney General; and
 - d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
4. Authorize the issuance of a management right-of-entry permit to the County of Hawaii covering the subject land under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - a. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time; and


- b. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Kevin E. Moore
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Interim Chairperson

Alii Drive



EXHIBIT B

0 40 80 160 240 320 Feet



JOHN WAIHEE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF LAND MANAGEMENT
P. O. BOX 621
HONOLULU, HAWAII 96809

AQUACULTURE DEVELOPMENT
PROGRAM
AQUATIC RESOURCES
CONSERVATION AND
ENVIRONMENTAL AFFAIRS
CONSERVATION AND
RESOURCES ENFORCEMENT
CONVEYANCES
FORESTRY AND WILDLIFE
LAND MANAGEMENT
STATE PARKS
WATER AND LAND DEVELOPMENT
DN 4756F

Refer to:
ACQ-90: .452

November 09, 1990

Board of Land and
Natural Resources
Honolulu, Hawaii

Hawaii

SUBJECT: Resubmittal
Request for Authorization to Acquire Lands
Having Resource Value to the State,
Holualoa 1st and 2nd, North Kona, Hawaii

STATUTE: Section 171-30 and Section 173A, HRS

AUTHORIZATION: ACT 316, SLH 1989, Item K-16 as amended by
ACT 299, SLH 1990, Item K-16

FOR: Parcel of land situate at Holualoa 1st and
2nd, North Kona, Hawaii being portion of
R. P. 4475, L. C. Aw 7713, Apana 43 to V.
Kamamalu identified as TMK: 7-6-16:32 as
shown outlined in red on map labeled Land
Board Exhibit "A" appended to the basic
file

AREA: 0.13 acres, more or less, subject to
confirmation by DAGS, Survey Division

LANDOWNERS: Wendell K. S. Foo, Sue L. Foo and Evelyn
S. Foo Trust, subject to verification by
title search

PURPOSE: To preserve lands having resource value to
the State and for providing shoreline
access, open coastal views and for mini
park purposes

ZONING: State Land Use Commission: Urban
County of Hawaii: Resort

ASSESSED VALUATION: Land \$74,500.00
Improvements 8,800.00

EXHIBIT C

CONSIDERATION:

To be determined by independent appraisal establishing fair market value, same subject to review and acceptance by the Chairperson

REMARKS:

At its January 27, 1989 meeting, agenda Item F-2, the Board approved the sale of two government road remnants to the landowners for consolidation with the subject abutting property identified as TMK: 7-6-16.32.

After this action was taken by the Board, the County of Hawaii informed us of a future flood control project planned for this area and recommended that we not sell the remnants. They also advised that the County of Hawaii was the owner of one of the remnants. Subsequently we also received many objections from the public concerning the proposed sale and requesting instead that the State acquire the subject parcel for park use.

In view of the information received from the County of Hawaii and the many public opposition to the proposed sale, we have re-evaluated this matter and now believe that the earlier Land Board action authorizing the sale of the road remnants should be rescinded.

Furthermore, because of the limited public access from Alii Drive to the shoreline in this area, we feel that the State should now acquire the subject property to provide shoreline access and for use as a shoreline mini-park. Its acquisition will also insure that no additional improvements will be constructed on the property.

This property is improved with a single family dwelling portions of which are encroaching on the government road remnant proposed for sale to the landowners. The landowners had requested to purchase the remnant in order to remedy this encroachment problem.

The tax map indicates this property to be a long and hourglass shaped parcel. However according to a shoreline survey made in March of 1989, the center portions of the property has eroded and the parcel is now effectively divided into two (2) separate land areas containing approximately 1995 sq. ft. and 2307 sq. ft.

Should we agree to sell the remnants, the landowners have indicated a willingness to convey to the State on a gratis basis, the 1995 sq. ft. area adjoining the State owned portion.

RECOMMENDATION: That the Board

- A. Rescind its action taken at its January 27, 1989 meeting under agenda Item F-2 approving the direct sale of the two (2) government road remnants to the landowners
- B. Approve of and authorize the acquisition of the subject parcel either by negotiation or if necessary by eminent domain subject to the approval of the Governor
- C. Authorize the securing of a right-of-entry from the landowners for site inspection, survey and appraisal purposes
- D. Authorize the hiring of an independent appraiser and other consultant services necessary to process the acquisition of the parcel.

Respectfully submitted,

W. Mason Young
W. MASON YOUNG

Land Management Administrator *js*

APPROVED FOR SUBMITTAL:

[Signature]
WILLIAM W. PATY, Chairperson